Southern Bakeries, LLC *and* Cheryl Muldrew *and* Lorraine Marks Briggs *and* Bakery, Confectionery, Tobacco Workers, and Grain Millers Union. Case 15–CA–169007, 15–CA–170425, and 15–CA–174022

May 1, 2018

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

On May 11, 2017, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. In addition, the General Counsel filed cross-exceptions, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order and to adopt the judge's recommended Order as modified and set forth in full below.[2]

This matter comprises three sets of allegations: (1) allegations involving the maintenance of seven work rules (Case 15–CA–174022); (2) allegations relating to employee Cheryl Muldrew (Case 15–CA–169007); and (3) allegations relating to employee Lorraine Marks Briggs (Case 15–CA–170425). In this decision, we examine in detail only the judge's findings related to Marks Briggs. Regarding the work-rule allegations, we shall sever Case 15–CA–174022 and retain those issues for future resolution. Concerning the Muldrew-related allegations, we adopt the judge's finding that the Respondent violated Section 8(a)(1) by telling Muldrew not to discuss her discipline with other employees and, later, telling her that she was being discharged, in part, for discussing her discipline. We also adopt the judge's dismissal of the allegation that the Respondent violated Section 8(a)(1) by telling employee Gloria Lollis that she could not discuss the Muldrew investigation with other employees.

As to the allegations concerning employee Marks Briggs, the judge found that the Respondent violated Section 8(a)(3), (4), and (1) by issuing Marks Briggs an October 16, 2015 last chance agreement, suspending her on February 8, 2016, pending investigation, discharging her on February 19, 2016, and marking her ineligible for rehire on March 4, 2016. As explained below, we find only that the Respondent violated Section 8(a)(3) and (1) through the last chance agreement, discharge, and do-not-rehire notation. Our findings are based on the fact that the Respondent, in each of these actions, inseparably relied on prior discipline that violated Section 8(a)(3) and (1).

I. FACTS

In *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016),[3] an earlier proceeding, the Board found that the Respondent committed a number of unfair labor practices before and after unlawfully withdrawing recognition on July 3, 2013, from Bakery, Confectionery, Tobacco and Grain Millers Union, Local 111. One of the violations the Board found was that the Respondent violated Section 8(a)(3) and (1) by issuing Marks Briggs a last chance agreement on May 30, 2013, because of her protected union activity.

The events in this proceeding occurred over 2 years later. In October 2015, Marks Briggs ate a piece of topping from a loaf of apple swirl bread going down the Respondent's production line. For breaking the work rule prohibiting eating on the production line, the Respondent issued Marks Briggs a last chance agreement that referred to her "previous record for rule violations," which could only mean her unlawful May 2013 last chance agreement, since the record contains no other prior rule violations. In February 2016, the Respondent had reason to believe that Marks Briggs chose to wash her hands in an area close to coworker Ashley Hawkins to irritate her and that they brushed each other as Marks Briggs passed. For breaking work rules on harassment

[1] The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall amend the judge's conclusions of law consistent with our findings herein. In accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall modify the judge's recommended tax compensation and Social Security reporting remedy. We shall modify the judge's recommended Order and substitute a new notice to reflect this change, our findings, and the Board's standard remedial language.

The General Counsel seeks a make-whole remedy that would include consequential damages incurred by the discriminatee as a result of the Respondent's unfair labor practices. The relief sought would require a change in Board law. Having duly considered the matter, we are not prepared at this time to deviate from our current remedial practice. See, e.g., *Laborers' International Union of North America, Local Union No. 91 (Council of Utility Contractors)*, 365 NLRB No. 28, slip op. at 1 fn. 2 (2017).

[3] Enfd. in relevant part, 871 F.3d 811 (8th Cir. 2017).

and leaving her work area without permission, the Respondent suspended Marks Briggs pending investigation and, several days later, discharged her. The discharge notice expressly relied on the May 2013 and October 2015 last chance agreements. On an internal termination document, Production Manager Tony Hagood wrote "do not rehire" after stating it was a "Violation of 2nd Last Chance Agreement." Hagood confirmed in his testimony that Marks Briggs' prior last chance agreements were a reason he made the do-not-rehire notation.

II. ANALYSIS

An employer's imposition of discipline violates Section 8(a)(3) and (1) if it relies on prior discipline that violates Section 8(a)(3) and (1), and the employer fails to show it would have issued the same discipline even without reliance on the prior unlawful discipline. *Dynamics Corp.*, 296 NLRB 1252, 1252–1255 (1989), enfd. 928 F.2d 609 (2d Cir. 1991); *Celotex Corp.*, 259 NLRB 1186, 1186 fn. 2 (1982). On their face, the October 2015 last chance agreement, the February 2016 discharge, and the subsequent do-not-rehire notation all partially relied on the unlawful May 2013 last chance agreement. We additionally find that the Respondent failed to prove that it would have issued the same discipline even had it not relied on the unlawful May 2013 last chance agreement.

Eating on the line, the basis of the October 2015 last chance agreement, was a less severe "Group B" violation according to the Respondent's employee handbook, and the Respondent offered no evidence that it had ever given an employee a last chance agreement solely for a Group B violation. The unlawful May 2013 last chance agreement appears to be the only explanation for the severity of Marks Briggs' October 2015 discipline. Harassment and leaving one's work area, the alleged reason for the Respondent's discharge of Marks Briggs, were more serious "Group A" violations that, according to the handbook, "often result in termination." The record shows, however, that most employees who have engaged in harassment or leaving their work areas have not been discharged for their actions, even under more severe circumstances than were present here. We are unable to conclude that absent the Respondent's reliance on the prior unlawful discipline, the comparatively minor actions by Marks Briggs would have prompted her discharge instead of some lesser disciplinary measure, such as a first, lawful last chance agreement. With respect to the do-not-rehire notation, the Respondent also failed to show that it would have taken this action even without reliance on the prior unlawful discipline, because the record contains no other examples of the Respondent making a similar notation on any other termination documents. Manager Hagood testified, moreover, that he made the notation based on Marks Briggs' "previous violations"—in other words, her May 2013 and October 2015 last chance agreements. Even assuming, as the Respondent argues, that Hagood made an error as a new manager unaware the Respondent did not make such notations, the notation relied on prior unlawful discipline and has yet to be retracted.

For only these reasons, we affirm the judge's conclusion that the Respondent violated Section 8(a)(3) and (1) when it issued Marks Briggs the October 2015 last chance agreement, discharged her, and marked her ineligible for rehire. As explained below, we find insufficient support for any of the judge's other findings regarding Marks Briggs.

The judge found, without any analysis, that the October 2015 last chance agreement, the February 2016 discharge, and the subsequent do-not-rehire notation also violated Section 8(a)(4).[4] Marks Briggs testified during the February 4–7, 2014 hearing before the Board's administrative law judge in the earlier proceeding concerning her May 2013 last chance agreement, but the judge here referenced no evidence of animus toward her participation in Board procedures and, indeed, the record is devoid of any evidence. The General Counsel failed to make the showing of animus necessary to prove Section 8(a)(4) violations. See *Voith Industrial Services*, 363 NLRB No. 109, slip op. at 1 fn. 2 (2016). We accordingly reverse these findings.

The judge found in his conclusions of law, without any analysis, that the February 2016 suspension of Marks Briggs before her discharge violated Section 8(a)(3), (4), and (1). Examples in the record persuade us that it was standard practice for the Respondent to suspend employees while investigating Group A violations, like the harassment and leaving-workstation allegations against Marks Briggs, even if the ultimate resolution was discipline less than discharge. The General Counsel failed to show that the suspension relied on prior unlawful discipline or was motivated by Marks Briggs' Board activity, but, even if he had, the Respondent established that it would have suspended Marks Briggs in any event.[5] We accordingly also reverse the judge's conclusion that the Respondent's suspension of Marks Briggs violated the Act.

[4] The judge appeared to imply that the Respondent's discipline of Marks Briggs violated Sec. 8(a)(3) and (1) notwithstanding the Respondent's reliance on her prior unlawful discipline because it was in response to prior union activity. We find it unnecessary to rely on this undeveloped basis for finding the violation.

[5] Similarly, even if the General Counsel showed that the suspension was motivated by past union activity, the Respondent successfully met its rebuttal burden to show that it would have suspended Marks Briggs anyway.

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent violated Section 8(a)(1) of the Act by:

(a) Telling Cheryl Muldrew not to discuss her last chance warning with anyone else on January 21, 2016.

(b) Telling Muldrew that she was being discharged in part for discussing her last chance agreement with other employees.

3. The Respondent violated Section 8(a)(3) and (1) by:

(a) Issuing a last chance agreement to Lorraine Marks Briggs on October 16, 2015, because of prior discipline that violated Section 8(a)(3) and (1).

(b) Discharging Marks Briggs on February 19, 2016, because of prior discipline that violated Section 8(a)(3) and (1).

(c) Marking Marks Briggs ineligible for rehire on March 4, 2016, because of prior discipline that violated Section 8(a)(3) and (1).

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Southern Bakeries, LLC, Hope, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they may not discuss their discipline with other employees.

(b) Telling employees that they have been disciplined for discussing prior discipline with other employees.

(c) Issuing employees last chance agreements, discharging employees, and marking employees ineligible for rehire because of prior discipline that discriminated against union activity or other protected concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lorraine Marks Briggs full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Lorraine Marks Briggs whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the judge's decision as amended by this decision.

(c) Compensate Lorraine Marks Briggs for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(d) Within 14 days from the date of this Order, remove from its files any reference to Lorraine Marks Briggs' unlawful last chance agreement, discharge, and do-not-rehire notation, and within 3 days thereafter, notify Marks Briggs in writing that this has been done and that the last chance agreement, discharge, and do-not-rehire notation will not be used against her in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Hope, Arkansas facility copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 16, 2015.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegations of Case 15–CA–174022, concerning work rules, are severed from this case and retained for future resolution.

Dated, Washington, D.C. May 1, 2018

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell employees that they may not discuss their discipline with other employees.

WE WILL NOT tell employees that they have been disciplined for discussing prior discipline with other employees.

WE WILL NOT issue you last chance agreements, discharge you, or mark you ineligible for rehire because of prior discipline that discriminated against union activity or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Lorraine Marks Briggs full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Lorraine Marks Briggs whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, and WE WILL also make Marks Briggs whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Lorraine Marks Briggs for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s) for Marks Briggs.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Lorraine Marks Briggs' unlawful last chance agreement, discharge, and do-not-rehire notation, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the last chance agreement, discharge, and do-not-rehire notation will not be used against her in any way.

SOUTHERN BAKERIES, LLC

The Board's decision can be found at http://www.nlrb.gov/case/15-CA-169007 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Linda M. Mohns and *Erin E. West, Esqs.,* for the General Counsel.

David L. Swider and *Phillip R. Zimmerly, Esqs. (Bose, McKinney & Evans, LLP)* of Indianapolis, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Hope, Arkansas, on January 11 and 12, 2017. Cheryl Muldrew filed the charge in case 15–CA–169007 on February 3, 2016. Lorraine Marks Briggs filed the charge in case 15–CA–170425 on February 25, 2016. The Charging Party Union, the Bakery, Confectionery, Tobacco Workers, and Grain Millers Union (BCTGM) filed the charge in case 15–CA–174022 on April 14, 2016. The General Counsel issued a complaint on August 18, 2016, in cases 169007 and 174022. Case 15–CA–170425 was consolidated with the former cases on September 28, 2016.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a limited liability company, operates a commercial bakery in Hope, Arkansas. At this facility it annually sells and receives goods valued in excess of $50,000 directly to/from points outside of Arkansas. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, the BCTGM, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that Respondent has violated Section 8(a)(1) of the Act: (1) since about October 2015, by maintaining a rule requiring employees to keep their discipline and company investigations confidential; (2) maintaining a rule prohibiting cameras, cell phones and similar devices in its facilities; (3) maintaining a number of other work rules and disciplinary procedures.

The General Counsel also alleges that Respondent, by Human Resources Manager Eric McNiel, violated Section 8(a)(1) by telling employees not to discuss their discipline, telling them company investigations were confidential and not to be discussed with other employees, and that they were being discharged for discussing their discipline.

Respondent is alleged to have violated Section 8(a)(4), (3), and (1) by issuing a "last chance agreement" to Lorrain Marks Briggs in October 2015; suspending and then discharging her in February 2016, and designating her as "ineligible for rehire" in March 2016.

[1] The transcript at several point attributes comments to Mr. Zimmerly that were made by the court reporter, Tr. 155, lines 10 & 14, 173; Tr. 344 line 15 should read ER 7.

The Prior Unfair Labor Practice Litigation

On August 4, 2016, the Board issued a decision in *Southern Bakeries, LLC,* 364 NLRB No. 64. That decision is currently pending before the United States Court of Appeals for the Eighth Circuit. The Board affirmed in large part the July 17, 2014 decision of Administrative Law Judge Robert Ringler. Judge Ringler conducted the evidentiary hearing in this matter on February 4–7, 2014.

The Board found that Respondent violated the Act in many respects, most notably withdrawing recognition from the BCTGM on June 14, 2013. As related in the Board's decision, Respondent recognized the Union as the exclusive bargaining representation of its production and sanitation employees from 2005, when it took over the Hope facility from Myers Bakeries, until 2013.

Most relevant to the instant case is that Rickey Ledbetter, the vice-president and general manager of Respondent, was present through the entire February 2014 hearing; and that Lorraine Marks Briggs (then Lorraine Marks) testified on behalf of the General Counsel.

Also relevant is the fact that the Board found that Respondent violated Section 8(a)(3) and (1) of the Act with respect to Marks Briggs. The Board found that Respondent violated the Act by issuing a Final Written Warning on May 30, 2013, for leaving her assigned work area without permission. 364 NLRB No. 64 (slip op. 1, fns. 1 and 2, 8–9, 9 fn. 1 (member Miscimarra's dissent), 19, 25–26, 30–31, 33–35). Respondent was required by Judge Ringler's Order and then the Board's Order to expunge its records of the May 30 discipline and not use it as the basis for future discipline. Respondent did not so expunge its records, and as I find herein, used it as a basis for discipline imposed on Marks Briggs in October 2015, and her discharge in February 2016.

The events leading to Lorraine Marks Briggs termination in February 2016

The October 2015 last chance agreement

Lorraine Marks Briggs worked for Respondent and its predecessor for 24-1/2 years prior to her termination on February 19, 2016. At the time of her termination she was a packer in the bread wrap department. On October 8, 2015, Tony Hagood, the newly hired production manager on the bread bake line, observed Marks Briggs pick a piece of the topping from some apple swirl bread and eat it. Hagood wrote up a disciplinary action form (DAF) and turned it in the human resources department.

Human Resources Manager Eric McNiel, who was hired on October 12, consulted with General Manager Rickey Ledbetter. Ledbetter told McNiel that Marks Briggs already had a "Last Chance Agreement" on her record. Tr. 337–338. McNiel and Ledbetter decided to issue Marks Briggs another "Last Chance Agreement" on October 16, 2015, (GC Exh. 5). This is functionally the same thing as a Final Written Warning.

> The Last Chance Agreement contains the following paragraph:
>
> After a management review of the facts surrounding the inci-

> dent and your previous record for rule violations, your behavior does call for immediate discharge; however, management has considered all extenuating circumstances, including 24 years of service. Management believes a "Last Chance Agreement" is more appropriate.

The reference to Marks Briggs' previous record of rules violations, so far as this record shows, could only refer to the May 30, 2013 final written warning. Eating on the production line is considered by Respondent to be a Group B violation, less serious than a Group A violation (Jt. Exh. 2, at 17–19). McNiel could not think of another instance in which an employee was given a last chance agreement solely for a Group B violation, Tr. 419. The evidence in this record also indicates that no other employee was given a last chance agreement/final written warning for a Group B violation (GC Exhs. 10(a)-(i), 20, 21, ER Exh. 1, p. B-12, ER Exh. 20) [9 violations of Rule 3, Group for eating, drinking or chewing gum in a production area].[2] This is a further indication that the May 30, 2013 final written warning was a major factor in the October 2015 last chance agreement.[3]

McNiel's testimony that the May 30, 2013 warning was not considered in issuing Marks Briggs a last chance agreement in October 2015, is not credible and convinces me that he is not a credible witness generally.

Events leading to Marks Briggs' discharge

Respondent became sufficiently concerned with the tone of interpersonal relationships on the breadline in January 2016 that it met with employees individually. Each breadline employee, including Marks Briggs, signed a form acknowledging that they had received a copy of the facility rules and policy against harassment (ER Exh. 7).

February 8, 2016

On February 8, 2016, the bread line stopped running for some reason. Marks Briggs left her workstation in the bread wrap area without informing a supervisor or asking permission. She walked to a wash stand in the bread scaling area. This is an area where ingredients for the products are put into bins. Employees Ashley Hawkins and Eugene Hopson were standing near the wash stand. Marks Briggs passed very close to Hawkins and their shoulders made contact. Hawkins claimed that Marks Briggs bumped into her on purpose, but not very hard (ER Exh. 11, Tr. 271). Hawkins also believed that when Marks Briggs returned to her workstation, she joked about it with other coworkers. Hawkins complained about this to Bread Line Manager Tony Hagood who took Hawkins to the human resources department.

Respondent interviewed Marks Briggs and Eugene Hopson as well as Hawkins. Marks Briggs claimed that as she walked to the side of Hawkins and Hopson, Hawkins deliberately bumped her. She believes that Hawkins was angry at her for reporting Hawkins to Supervisor Bob Buckley for eating on the production line sometime in the fall of 2015.

Respondent interviewed Marks Briggs, Hopson, and Hawkins twice. In the second interview each responded to a series of questions. On February 8, all Hopson could tell McNiel was that, "I was in my work area talking with Ashley and the lady came over there and she hasn't been there before, "ER Exh. 16. The next day, McNiel recorded that Hopson stated that Marks Briggs walked between him and Hawkins, that there was plenty of room for her to have walked around the two of them and that he did not see Marks Briggs bump Hawkins. He also said that Marks Briggs said nothing to Hawkins, but that Hawkins said "excuse you" to Marks Briggs.

On February 19, 2016, McNiel and Hagood presented Marks Briggs a termination notice, which Hagood read to her. It stated she was being discharged for violating a number of the company's Group A (more serious) rules.[4] The discharge document states that Marks Briggs was being terminated for violating Rule 3, leaving her work area without permission; Rule 5 the rule concerning harassment, provoking a fight or otherwise creating a hostile or unpleasant work environment; Rule 6 disobeying the instruction of a supervisor [apparently referring to her not complying with the instructions she received on January 22 regarding harassment]; and Rule 22 job abandonment—leaving an assigned work area without permission.

> The document also states the following:
>
> A review of your work history includes two (2) final warnings "Last Chance Agreements" regarding your violation of Group A Rules 3 and 22 leaving your work area/and walking off the job without permission on May 30, 2013 and Group B Rules 3 and 13 eating outside of company designated facility break areas/failure to observe facility safety or good manufacturing rules on October 16, 2015.

Decision

[2] I reject Eric McNiel's assertion that eating product is a more serious violation than eating other food or chewing gum. The Safe Food Quality Code, to which Respondent is bound, does not make this distinction, ER Exh. 14, pp. 153–155, nor is there any evidence that anyone else does. Moreover, it seems counterintuitive that chewing gum or eating French fries on the production line is less likely to result in product contamination than picking the topping off of apple swirl bread.

[3] Respondent at pp. 22–23 of its brief cites to examples of employees terminated at least in part for leaving their work area without permission. Most, if not all, of these employees did not leave their work area briefly when the production line was down, as did Briggs. For example the employee in the first example ignored the instructions of his supervisor and went to a trailer to take a nap. Several others left the plant completely. None of these situations is comparable to Marks Briggs' violation of Respondent's rule.

[4] According to Respondent's handbook, Jt. Exh. 2, p. 17, Group A violations often, but not necessarily result in termination. This record includes examples of Group A violations involving other employees that did not result in their termination, GC Exh. 12, ER Exh. 18 [final written warning issued to Juan Betancourt on May 26, 2015]. Betancourt admitted to telling another employee that he would beat the other employee up if their argument continued. The other employee claimed that Betancourt also threatened to shoot him. Respondent declined to fire Betancourt solely because he denied this allegation. This is in contrast to its decision to credit Hawkins' account over that of Marks Briggs who also denied deliberately initiating contact with Hawkins.

> After a management review of the facts surrounding the incidents, the seriousness of the multiple rule and policy violations, i.e., insubordination, including physical contact/promoting a hostile work environment and possible retaliation, and taking into account the "Last Chance Agreements" given to you on May 30, 2013 specifically for leaving your work area without permission/walking off the job and October 17, 2015 for eating outside of company designated facility break areas/failure to observe facility safety and good manufacturing rules, your behavior is unacceptable and your employment is terminated.

(GC Exh. 6.)

Despite the plain language of the discharge document, McNiel testified incredibly that the May 30 "Last Chance Agreement" did not play any role in the termination of Marks Briggs. (Tr. 368–369.)

McNiel claimed to have no knowledge about the 2014 unfair labor practice hearing. However, he consulted with Rickey Ledbetter about the Marks Briggs termination. Ledbetter was well aware that Marks Briggs had testified at that proceeding for the General Counsel and was at least on notice that the May 30, 2013 last chance agreement had been found illegal by Judge Ringler. I do not credit McNiel's testimony that Ledbetter merely confirmed a termination decision made by McNiel. I conclude that Ledbetter played some role in the termination decision and the extent of that role may not be reflected in this record. Respondent called Ledbetter as a witness in this proceeding. Neither party inquired as to his role in the Marks Briggs termination.

Analysis Regarding the Mark Briggs Last Chance Warning and Discharge

Both the Last Chance Warning given to Marks Briggs and her discharge violate Section 8(a)(3) and (1) because they relied on the prior unlawful warning given to her on May 30, 2013, and because Respondent failed to establish it would have disciplined her in the same way in October 2015 or that it would have discharged her absent that reliance, *Celotex Corp.,* 259 NLRB 1186, 1186 fn. 2, 1190–1193 (1982).

With regard to February 2016 interaction with Ashley Hawkins, Respondent had a reasonable basis for concluding that Marks Briggs intended to antagonize Hawkins by using the wash stand in the bread scaling area and walking close to Hawkins. Sandra Phillips[5] testimony at Transcript 101–103 establishes that normally employees would have gone to a wash station near the break area, rather than the scaling area. Moreover, Marks Briggs testimony indicates that she knew Hawkins was hostile to her. However, the record does not show that Respondent had sufficient cause, absent reliance on the illegal warning, to discharge Marks Briggs.

Respondent has not shown that it had any reasonable basis for believing Hawkins' contention that Marks Briggs brushed her, as opposed to Marks Briggs contention that Hawkins initiated physical contact.[6] Beyond that, the physical contact between the two employees was brief and so insignificant that Eugene Hopson, who was standing right next to them, did not even notice it (Tr. 271, 456). By all accounts, Marks Briggs did not stop walking when she encountered Hawkins and did not come near her when she returned to her workstation (Tr. 250, 457).

Respondent designates Marks/Briggs as ineligible for rehire

On March 4, 2016, Bread Line Manager Tony Hagood filled out a form entitled "Termination Checklist Settlement," (GC Exh. 7).[7] He wrote the following in the box marked termination classification:

> Violation of 2nd Last Chance Agreement
> Intimidation of Another Employee
> Do Not Rehire

At the hearing Respondent asserted that Hagood made a mistake and that the "Do Not Rehire" notation was contrary to company policy. There is no evidence of a similar notation for any other employee and a number of examples of termination checklists without the "Do Not Rehire" notation (GC Exh. 26).

In order to contradict what appears on its face as obvious discrimination, McNiel testified that "we talked to him about that," Tr. 371–373. Hagood testified that sometime in 2016, McNiel directed him not to do that anymore, Tr. 480–482. McNiel said he did not alter the document due to the pendency of the instant proceeding.[8]

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[5] Respondent suggests at pp. 20–21 of its brief that the absence of any evidence of discrimination against other union witnesses from the 2014 hearing, particularly Phillips, indicates that it did not discriminate against Marks Briggs. However, "a discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents." *Nachman Corp. v. NLRB,* 337 F.2d 421, 424 (7th Cir. 1964)*; Igramo Enterprise,* 351 NLRB 1337, 1339 (2007).

[6] The record indicates that Hawkins had reason to try to get Marks Briggs in trouble and that Respondent was aware of that fact. Marks Briggs testified that before the February 8 incident she reported to her Supervisor, Bob Buckley, that Hawkins was eating a breadstick off the production line. Respondent did not call Buckley as a witness to refute this testimony; therefore I credit it. Hawkins testified that Buckley told her that someone reported to him that she was eating bread on the production line, Tr. 253. The record also indicates that Hawkins knew or suspected that it was Marks Briggs who had reported her alleged misconduct to management. At the February 8, 2016 meeting during which Human Resources Director McNiel suspended Marks Briggs, she told him that she had reported Hawkins to Bob Buckley, Tr. 138–139 and included this assertion in the written statement she gave Respondent at that meeting.

Hawkins, by her own account, is a person who takes offense easily, Tr. 253–254. In November 2014, Respondent disciplined her for excessive arguing with another employee, GC Exh. 18. She had also been fired by Respondent, apparently for signing another employee in from break, Tr. 261–262, and then was rehired per an internal appeal. Hawkins was still on a last chance agreement in February 2016, which likely made her more sensitive to another employee reporting her alleged misconduct to management.

[7] I discredit Hagood's assertion that he made this entry after March 4. The document on its face establishes that is the date of his entries on the form.

[8] The record is silent as to when in 2016 McNiel discovered that Hagood was writing "not eligible for rehire" on termination documents and when he told Hagood to cease that practice. Obviously, if this occurred prior to August 31, 2016, nothing would have prevented Respondent from altering the document. Respondent was at least on

The record belies Respondent's suggestion that Hagood's notation was an inadvertent error made without discriminatory intent. On August 31, 2016, Board Agent Jennifer Rau advised Respondent's counsel that she had received Marks Briggs' third amended charge concerning Respondent marking her ineligible for rehire (GC Exh. 27). Rau's email stated, "if you wish to provide additional evidence responding to the new allegations, please do so by September 8, 2016, if not I will present the case to the Regional Director with the evidence currently provided." While Respondent's counsel raised issues as to how Marks Briggs became aware of the notation, at no time prior to the instant hearing did it contend that the notation was erroneously made by Hagood, contrary to company policy. On September 28, 2016, the General Counsel consolidated Marks Briggs third amended charge with the other allegations in this case.

From this I conclude that just prior to the instant hearing, Respondent realized that the "Do Not Hire" notation was obviously discriminatory and came up with the rationale presented at trial. I reject this explanation and find that the "Do Not Rehire" notation was discriminatorily motivated.[9]

Allegations predicated on the testimony of Cheryl Muldrew
(complaint paragraph 8)

Cheryl Muldrew worked for Respondent and its predecessor for 16 years. She was terminated on January 27, 2016, for allegedly threatening another employee. She filed a charge and amended charges alleging that her suspension on January 21, 2016, and discharge on January 27, 2016, violated the Act. The General Counsel did not file a complaint on these allegations. However, the General Counsel did file a complaint on several allegations raised in Muldrew's third amend charge filed on April 14, 2016.

On January 14 or 15, 2016, Respondent suspended Muldrew pending an investigation for allegedly threatening another employee and eating a peppermint on the production line. On January 19, Eric McNiel gave her a last chance agreement. Muldrew testified that McNiel told her she was not to discuss her discipline with anyone. McNiel denies this. On January 27, Respondent fired Muldrew for allegedly making threatening comments about the employee who reported the first alleged threat to Respondent. She testified that McNiel told her that she was being discharged for making threatening comments and discussing her discipline.

Muldrew's discharge documents (ER Exh. 1, p. B-1), state that an employee reported to Tony Hagood that Muldrew had been making retaliatory and threatening comments and discussing the confidential situation from the previous week. I credit Muldrew and find that Eric McNiel told her not to discuss her January 19 last chance agreement with other employees. First of all, there isn't any other confidential information to which the January 27 discharge document could be referring to. Moreover, on this point I find Muldrew more credible than McNiel, given McNiel's incredible testimony regarding Respondent's use of Marks Briggs' May 30, 2013 discipline. Thus, I find that Respondent violated Section 8(a)(1) as alleged in complaint paragraphs 8(a) and 8(c).[10] McNiel's instructions on confidentiality were not part of a fact finding investigation and therefore made without a legitimate and substantial business justification as in *Caesar's Palace,* 336 NLRB 271, 272 (2001).

I dismiss the allegation in paragraph 8(b) due to the inconsistency between Gloria Lollis' trial testimony and the affidavit she gave to the Board prior to the hearing.

Maintenance of allegedly violative rules
(complaint paragraph 7)

The General Counsel alleges that Respondent is violating Section 8(a)(1) of the Act by maintaining the following rules in its employee handbook (Jt. Exh. 2).

> Employees, contractors, and visitors may not carry cameras or imaging devices into any Southern facilities.
>
> This includes:
>
> 1. Conventional film, still cameras
> 2. Digital still cameras
> 3. Video cameras
> 4. PDA cameras
> 5. Cell phone cameras
>
> An employee with authorization to take pictures in the facility must sign in at the front reception desk and be given a Photographer's Pass. This pass must be worn at all times while shooting pictures. A Southern management employee must accompany the employee.

(Jt. Exh. 2, p. 13.)

FACILITY RULES AND DISCIPLINARY PROCEDURES

notice of Hagood's mistake on March 10, 6 days after he wrote "do not hire" on Marks Briggs termination checklist, when Annette Capetillo, McNiel's assistant, filled out another part of the form.

Hagood's testimony at Tr. 482 indicates that he filled out other termination checklists. Respondent did not introduce any others with "do not rehire," which, if they exist, would indicate Hagood was not discriminating against Marks Briggs.

[9] Another indication of Respondent's discriminatory motive is that Tony Hagood suggested to Ashley Hawkins that they go to human resources to complain about Marks Briggs. This is in marked contrast to his inaction when Nadine Pugh, an employee who filed a petition to decertify the Union, was insubordinate to him. 364 NLRB No. 64, slip op. at 11, Tr. 28, 145–146, 474, 478–479. Further, Hagood's testimony that Hawkins told him that Marks Briggs threw an elbow or elbowed Hawkins, Tr. 474, is an indication of Respondent's animus towards Marks Briggs emanating from her union support and prior testimony. Hawkins's written statement of February 8, Er. Exh. 11, states, "she bumped me." The next day when meeting with McNiel and HR Representative Annette Capetillo, Hawkins apparently said Hawkins pushed her, Er. Exh. 12, Tr. 257–258. At this hearing, Hawkins testified that Marks Briggs pushed her, Tr. 250. Given the fact that Eugene Hopson, who was standing there, did not notice any contact, I conclude this is an exaggeration.

[10] The General Counsel's position with regard to par. 8(c) is not necessarily inconsistent with his decision not to go to complaint on Muldew's discharge. He may have decided that Respondent would have fired Muldew for nondiscriminatory reasons apart from the illegal reason it cited at the time of her termination.

****

GROUP A

These infractions are serious matters that often result in termination. These listed infractions are not all-inclusive. Any conduct, which could interfere with or damage the business or reputation of the Company or otherwise violate accepted standards of behavior, will result in appropriate discipline up to and including immediate discharge.

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3. Using Company time or resources for personal use unrelated to employment with the Company without proper authorization. This includes leaving Company property during paid breaks or leaving your assigned job or work area without permission.

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9. Any off-duty conduct, which could impact, or call into question the employee's ability to perform his/her job.

---

12. Unauthorized use of still or video cameras, tape recorders, or any other audio or voice recording devices on Company premises, in a Company supplied vehicle, or off-Company premises involving any current or former Company employees, without such person's expressed permission while on Company business.

GROUP B

7. Bringing or allowing any non-employee inside the facility (including the break room) without prior permission from management. Unauthorized plant entry by employees.

Jt. Exh. 2 pp. 17–19.

Relevant Case Law Regarding Respondent's Rules

The Board has held that an employer violates Section 8(a)(1) when it maintains a work rule that reasonably tends to chill employees in the exercise of their Section 7 rights, *Lafayette Park Hotel,* 326 NLRB 824, 825 (1998). A rule is unlawful if it explicitly restricts activities protected by Section 7. If this is not true, a violation is established by a showing that 1) employees would reasonably construe the language to prohibit Section 7 activity; 2) that the rule was promulgated in response to protected activity or 3) that the rule has been applied to restrict the exercise of Section 7 rights, *Lutheran Heritage Village-Livonia,* 343 NLRB 646, 647 (2004). The Board stated that a rule would not violate the Act merely because it *could* be read to prohibit protected activity. In undertaking this analysis, the Board must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights.

With regard to some of Respondent's rules, the General Counsel, relying on such cases as *University Medical Center,* 335 NLRB 1318, 1320–1322 (2001), and *Tradesman International,* 338 NLRB 460 (2002), appears to contend that a broadly worded rule that *could* be read to prohibit protected activity is illegal unless it contains language that gives examples that would lead a reasonable employee to conclude that protected conduct is not within the rule's ambit. First, I would note that these cases were decided before *Lutheran Heritage Village-Livonia.* Secondly, I conclude that this contention is inconsistent with that decision.

Instead, I conclude that where a rule has not been promulgated in response to protected activity, has not been applied to restrict Section 7 rights and does not explicitly restrict protected rights, there must be some specific reason advanced for why a reasonable employee would construe the language to inhibit Section 7 rights. I find the General Counsel has not done so in this case with the following exceptions.[11]

The rule against the use of photographic and/or audio equipment

Several recent decisions have addressed photographing and recording by employees on company property. In *Flagstaff Medical Center,* 357 NLRB 659 (2011), the Board found that a hospital's rule prohibiting the use of cameras for recording images of patients and/or hospital equipment, property, or facilities, did not violate the Act.

In *Rio All-States Hotel & Casino,* 362 NLRB No. 190 (2015), the Board found a rule that prohibited the use of any type of audio visual recording equipment and/or recording device unless authorized for business purposes, to be illegal. The Board distinguished the case from *Flagstaff Medical Center* by concluding that the Casino's rules included no indication that they were designed to protect privacy or other legitimate interests.

In *Whole Foods Market, Inc.,* 363 NLRB No. 87 (2015), the Board found illegal two company rules. One prohibited the recording of phone calls, images, or company meetings with any recording device unless prior approval is received from management, or all parties to the conversation consent to its recording. Violation of this rule could lead to discipline up to and including discharge.

The second rule was similar. Whole Foods stated as its purpose the elimination of a chilling effect on the expression of views if one person is concerned that the conversation is being secretly recorded. The Board found both rules illegal. The Board citing *Rio All-States Hotel & Casino* stated that photography and audio or video recording in the workplace . . . are protected by Section 7 if employees are acting in concert for their mutual aid and protection and no overriding employer interest is present. The Board distinguished *Flagstaff Medical Center* by concluding that Whole Foods' business justification is not nearly as pervasive or compelling as the patient privacy interest in *Flagstaff*.

[11] I conclude the Rule prohibiting unauthorized entry into the facility by employees is not violative. The General Counsel's reliance on *St. John's Health Care,* 357 NLRB 2078, 2080–2083 (2011), is misplaced. Although not explicit, it is implicit in that case that the employer's new access rule was promulgated in response to union organizing activity. Similarly, I do not read *Tri-County Medical Center,* 222 NLRB 1089 (1976) as broadly as the General Counsel. In that case, Respondent's access rule was discriminatorily applied to union organizing.

The Board, relying on *Rio All-States Hotel* and *Whole Foods,* reversed the Judge's finding that an employer's rule was not violative in *T-Mobile, Inc.,* 363 NLRB No. 171 (2016). In *T-Mobile,* while tacitly acknowledging the employer's interest in maintaining employee privacy, confidential information and promoting open communication, the Board found the rule to be violative because it was not narrowly tailored to promote its legitimate interests and would reasonably be construed to restrict employees' Section 7 rights.

Further in both the *Whole Foods* and *T-Mobile* decisions, the Board noted that protected conduct may include a number of things including recording evidence to preserve it for later use in administrative or judicial forums in employment-related actions. As the Board has stated, "moreover, our case law is replete with examples, when photography or recording, often covert was an essential element in vindicating the underlying Section 7 right." 363 NLRB No. 87, slip op. 3 and at fn. 8. My experience as an NLRB judge for 20 years confirms that assessment.

With regard to the ban on photography, I find this case more similar to *Flagstaff Medical Center* than the other relevant Board cases mentioned above. Respondent has established a pervasive and compelling interest in its proprietary information. In particular, Respondent has established a compelling interest in not allowing photographs that might reveal its production of baked goods pursuant to co-manufacturing agreements with other companies. If for example, Respondent produces Hostess cupcakes at its Hope facility, Hostess and Respondent have a pervasive interest in not revealing this to competitors of both companies and the public. Since the break rooms at the Hope facility have windows looking out into the production areas, I find Respondent has a compelling interest in forbidding photography even in the break rooms.

On the other hand, Respondent has not established such a pervasive and compelling interest in prohibiting audio recordings in nonproduction areas (e.g. break rooms, human resource offices) of the Hope facility. I find Respondent's rule to be illegal with regard to audio recording in nonproduction areas of the plant for the reasons stated in the *Whole Foods* and *T-Mobile* decisions.

The rules against using company time resources for personal use unrelated to employment with the company

Respondent's employees are not allowed to leave the facility during 15 minute paid breaks and apparently are subject to being called upon during these breaks to fill-in for other employees, Tr. 290. Therefore, this rule is likely to be interpreted as restricting Section 7 rights given Respondent's failure to distinguish between employee rights during working time and breaktime, *Hyundai American Shipping Agency, Inc.,* 357 NLRB 860, 872–873 (2011).

CONCLUSIONS OF LAW

Respondent violated Section 8(a)(1) of the Act by:

(1) Telling Cheryl Muldew not to discuss her last chance warning with anyone else on January 21, 2016;

(2) Telling Cheryl Muldew that she was being discharged in part for discussing her last chance agreement with other employees;

(3) Maintaining a rule that prohibits employees from making audio recordings anywhere in its Hope facility at any time.

(4) Maintaining a rule that prohibits employees from using company time or resources for personal use unrelated to employment at any time, including nonwork time.

Respondent violated Section 8(a)(1), (3), and (4) of the Act by:

(1) Issuing a last chance agreement to Lorraine Marks Briggs on October 16, 2015;

(2) Suspending Marks Briggs on February 8, 2016;

(3) Discharging Marks Briggs on February 19, 2016;

(4) Marking Marks Briggs ineligible for rehire on March 4, 2016.

REMEDY

The Respondent, having discriminatorily discharged Lorraine Marks Briggs, must offer her reinstatement and make her whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Respondent shall compensate her for her search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings, computed as described above.

Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate the Marks Briggs for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.,* 359 NLRB 518 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Southern Bakeries, Hope, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in union or other protected concerted activity or testifying in an NLRB proceeding.

(b) Maintaining work rules that prohibit employees from making audio recordings during nonwork time in nonwork areas of its facility.

(c) Maintaining rules that prohibit employees from using company time or resources for personal use unrelated to employment at any time, including nonwork time.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Telling employees that they may not discuss their discipline with other employees or that they have been disciplined for discussing prior discipline with other employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Lorraine Marks Briggs full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Lorraine Marks Briggs whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the decision. Compensate Lorraine Marks Briggs for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(c) Compensate Lorraine Marks Briggs for her search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful disciplines and discharge and within 3 days thereafter notify Lorraine Marks Briggs in writing that this has been done and that the discharge will not be used against her in any way.

(e) Rescind its rules that prohibit employees from making audio recordings during nonwork time in nonwork areas of its facility.

(f) Rescind its rules that prohibit employees from using company time or resources for personal use unrelated to employment at any time, including nonwork time.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its Hope, Arkansas facility copies of the attached notice marked "Appendix".[13] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 16, 2015.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 11, 2017

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in union or other protected concerted activity, or for testifying in a National Labor Relations Board proceeding

WE WILL NOT tell you that you may not discuss discipline that we have issued to you with other employees or tell you that it is confidential without explaining that you are free to discuss your discipline with anyone that you wish.

WE WILL NOT maintain rules that prohibit employees from making audio recordings anywhere in our Hope facility at any time.

WE WILL NOT maintain a rule that prohibits employees from using company time or resources for personal use unrelated to employment at any time, including nonwork time.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Lorraine Marks Briggs full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make Lorraine Marks Briggs whole for any loss of earnings and other benefits resulting from her discharges and suspension, less any net interim earnings, plus interest compounded daily.

WE WILL compensate Lorraine Marks Briggs for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL compensate Lorraine Marks Briggs for her search-for-work and interim employment expenses regardless of whether those expenses exceed her interim earnings.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful disciplines and discharge of Lorraine Marks Briggs and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the disciplines and discharge will not be used against her in any way.

SOUTHERN BAKERIES, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-169007 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.